

**STATE BOARD OF EQUALIZATION**

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February 23, 1995

BURTON W. OLIVER
Executive Director

Mr. [X]
[Y]
XXXXX --- Boulevard, --- Floor
---, CA XXXXX

Re: S- -- XX-XXXXXX
ABC, Inc.

Dear Mr. [X]:

This is in response to your letter dated December 27, 1994 regarding the application of tax on sales of aircraft fuel to your client, ABC, Inc. ("ABC").

You state that ABC purchases Jet-A fuel from a supplier at a specific location within California. The supplier transfers title to the Jet-A fuel to ABC via a "fuel storage system, as opposed to a wingtip basis." We understand this to mean that ABC purchases fuel from its supplier which is delivered to and stored in storage facilities owned by ABC prior to the transfer of this fuel to its planes for use. (If this assumption is incorrect, our opinion would be different.) You ask what constitutes "immediate consumption or shipment" for purposes of Revenue and Taxation Code section 6357.5.

Discussion

Sales tax is imposed on a retailer's gross receipts from the retail sale of tangible personal property in this state unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) The sales tax is imposed on the retailer who may collect sales tax reimbursement from the purchaser if the contract between the parties so provides. (Civ. Code § 1656.1.)

The exemption relevant to sales of fuel to air common carriers is set forth in Revenue and Taxation Code section 6357.5:

“(a) There are exempted from the taxes imposed by this part the gross receipts

from the sale of, and the storage, use, or other consumption of, fuel and petroleum products sold to an air common carrier for immediate consumption or shipment in the conduct of its business as an air common carrier, on an international flight.

“(b) To qualify for the exemption, the air common carrier shall furnish to the seller an exemption certificate in writing stating the quantity of fuel and petroleum products claimed as exempt. That certificate shall bear the purchaser’s valid seller’s permit number or valid fuel exemption registration number and shall be substantially in the form prescribed by the board. Acceptance in good faith of that certificate shall relieve the seller from liability for the sales tax.

“(c) ‘Immediate consumption or shipment,’ as used in this section means that the delivery of the fuel and petroleum products by the seller is directly into an aircraft for consumption or transportation outside the United States and not for storage by the purchaser or any third party.

“....”

This means that sales of aircraft fuel flowing from a vendor’s storage facility and delivered directly into the buyer’s aircraft for flight outside the United States falls within the section 6357.5 exemption. However, where fuel is transferred by the vendor into a storage facility controlled by the purchaser, the fuel is not sold for immediate consumption or shipment and tax applies to the sale of that fuel. In particular, Sales and Use Tax Regulation 1621(b)(3) provides:

“To qualify for the exemption, the sale of the fuel or other petroleum products must be for ‘immediate consumption or shipment.’

“A ‘sale’ occurs when the purchaser takes either title to or possession of the fuel. ‘Immediate consumption or shipment’ occurs when the delivery of fuel by the seller is directly to an aircraft for consumption in propulsion to a foreign destination or for transportation to a foreign destination and not for storage. Fuel is sold for storage, and not for immediate consumption or shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller. **Fuel is sold for storage, and not for immediate consumption or shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale providing that the seller shall retain title to the fuel until the fuel is loaded onto the aircraft. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.** (Emphasis

added.)

“ ”

We understand that ABC purchases fuel from its supplier which is delivered to and stored in facilities owned by ABC. Pursuant to Regulation 1621(b)(3), tax applies to these fuel sales since the storage facility receiving fuel from the vendor is under the control of ABC. ABC's subsequent transfer of this fuel into its aircraft (even if that transfer is made shortly after its receipt of the fuel in its tanks) does not qualify as “immediate consumption or shipment” since title to the fuel passed to ABC upon the vendor's delivery into ABC's tanks. Moreover, the application of tax to this transaction does not change even if the contract of sale between the fuel vendor and ABC provides that title to the fuel does not pass until the fuel is loaded onto the aircraft.

If you have any further questions, please write again.

Sincerely,

Warren L. Astleford
Staff Counsel

WLA:plh

cc: --- District Administrator - --